Nos. 04-1244 and 04-1552

Supreme Court, U.S.
FILED
MAY 11 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

JOSEPH SCHEIDLER, ANDREW SCHOLBERG, TIMOTHY MURPHY, and THE PRO-LIFE ACTION LEAGUE, INC.,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,
Respondents.

OPERATION RESCUE,
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF CONSISTENT LIFE, *ET AL.*, IN SUPPORT OF PETITIONERS

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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INTEREST OF *AMICI CURIAE*

Amici[1] are civil rights organizations, labor unions, political groups, voluntary associations or persons who (1) are committed to principles of nonviolent direct action on a wide range of social issues, (2) do not condone the use of violence as a legitimate form of social protest, and (3) do not necessarily agree with the substantive views of the petitioners about abortion (some do and some don't).

Amici are interested in a prompt disposition of this case because the misapplication of the federal Racketeer-Influenced and Corrupt Organizations Act [RICO] exposes them to enterprise liability with staggering penalties (treble damages, attorney fees, nationwide injunctions of great duration) whenever two of more supporters of any of the organizational *amici* (who need not be members of the various organizations or communities appearing in this brief as *amici*) act in a manner deemed by a federal judge to constitute an act or threat of violence against a person engaged in interstate commerce or against the property of such a person.

Committed as the *amici* are to nonviolence, they are also aware that the lower court's misreading of the Hobbs Act places all of the *amici* in grave financial jeopardy if any of our supporters engage in conduct vaguely defined as a threat to property affecting interstate commerce. This judicial imposition of vicarious liability for loosely connected supporters of various causes espoused by *amici* is at odds with the text of the statute itself and threatens to chill the efforts of the *amici* to involve as many as possible in the goals they seek to advance in our democracy.

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than amicus curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

This brief is submitted with the consent of the parties, whose consent letters have been filed with the Clerk of the Court. The particular interests of the *amici* curiae are stated in Appendix A.

REASONS FOR GRANTING THE PETITION

I. BY DISREGARDING THE CLEAR MANDATE OF THIS COURT, THE COURT OF APPEALS LEFT OPEN THE POSSIBILITY THAT THE FEDERAL RACKETEERING STATUTE CAN BE MISUSED AGAINST POLITICAL AND LABOR PROTESTERS OF ALL SORTS BY THEIR POLITICAL ADVERSARIES.

A. Congress never intended RICO to apply to civil protesters.

Amici do not propose that the Court look to isolated sentences in a committee report or a floor debate, but to the *amendment of the text of the statute* after consideration of serious objections to the preexisting bill. In 1969 the bill that would eventually become RICO defined "racketeering activity" very broadly to include "any act involving the danger of violence to life, limb or property, indictable under State or Federal law and punishable by imprisonment for more than one year." S. 1861, 91st Cong., Section 2(a) (1969). *see also* 115 Cong. Rec. 9569 (1969). Several objected to this language. For example, Senators Edward Kennedy and Philip Hart complained that the bill reached beyond "organized crime." S. Rep. No. 91-617, at 215 (1969). The American Civil Liberties Union also opposed the bill, expressing the concern that social and political protesters might fall within the bill's ambit. The ACLU found the breadth of the original definition of racketeering activity "particularly troublesome," citing the anti-war demonstrations at the Pentagon and at Columbia University. *Measures Relating to Organized Crime: Hearings on S.30 and Related Measures Before the Subcomm. on Crim.*

Laws and Proc. of the Senate Comm. on the Judiciary, 91st Cong. 475-76 (1969). The ACLU feared that this version of the bill would be used by the Nixon Administration to suppress anti-Vietnam war dissent. The Department of Justice also objected to the sweeping definition of "racketeering activity" in the bill, arguing that it was "too broad and would result in a large number of unintended applications." S. Rep. No. 91-617, at 121-22. Deputy Attorney General Richard G. Kleindienst suggested an amendment to narrow the definition to a list of specific offenses "customarily invoked against organized crime." *Id.* at 158.

In response to these misgivings, the Senate Judiciary Committee eliminated the broad language defining "racketeering activity" as "danger of violence to life, limb or property," and replaced it with a list of designated federal and state offenses, such as the Hobbs Act. The new language was virtually identical to that recommended by the Justice Department. The Senate adopted the revised bill by a vote of seventy-three to one. 116 Cong. Rec. 972 (1970). The House then made minor amendments with which the Senate concurred. *Id.* at 36,296. President Nixon signed the bill into law on October 15, 1970. *See* Brian Murray, "Protesters, Extortion, and Coercion: Preventing RICO from Chilling First Amendment Freedoms," 75 NOTRE DAME L. REV. 691, 697 & n.21 (1999).

One of the objectionable features of the opinions of the court of appeals on remand is that three unelected judges have, in effect, reinstated the arguably unconstitutional broader version of the bill that the Senate expressly rejected. And the court of appeals completely ignored the concerns of Justices Ginsburg and Breyer about the expansive use of RICO, *Scheidler v. NOW*, 537 U.S. 393, 411-12 (2003) (*Scheidler II*), (Ginsburg, J., concurring), No. 04-1352, Pet. App. 48a-49a.

Congress emphatically did not intend RICO to be used as a bludgeon against social protesters, as the lower courts have

done not only in this case, but also in other cases directly affecting some of the amici. The Court should issue the writ now to reinstate a sensible construction of RICO and the Hobbs Act.

B. Enough is enough.

As a practical matter, there must be some finality to litigation. Amici are activists who may not be able to define with precision the point when finality is or should be reached. But like Justice Stewart's famous assessment of another matter, amici know waste of time and precious resources when they see it. *See Jacobellis v.Ohio*, 378 U.S. 184, 194 (1964) (Stewart, J., concurring). This lawsuit has gone on for nearly two decades and makes the lawyers in Chancery described in Charles Dickens's *Bleak House* (1994; orig. ed. 1852-1853) look like models of efficiency as they wore down the estates of decedents through filing document after document.

In its most recent order, the court of appeals assures the parties that it does not mean to "open Pandora's Box," but "merely resolves the final loose ends in this long-running litigation." No. 04-1244, Pet. App. 16a. But this Court already resolved all the "loose ends" of this litigation in 2003. The court of appeals has needlessly prolonged the case for two years, and has proposed a recipe for further delay by remanding to the district court to decide among various competing views on how to read the Hobbs Act. And it did so after strongly suggesting that a Hobbs Act violation can occur without robbery or extortion, a view plainly at odds with the other circuits that have considered this question. See No. 04-1244, Pet. 18-22. No matter what the trial court does, the losing side would surely then appeal back to the very court that created the confusion and the circuit conflict in the first place, and then back up to this Court. So it saves a lot of time and money for this Court to decide now the three questions

presented, two of which can be disposed of summarily by vacating the opinions below.

During the two years during which the court of appeals has been pondering this Court's order in *Scheidler II*, a nationwide injunction has remained in place. We discuss the question of the availability of injunctive relief by private litigants in a civil RICO action in Part III below.

The ingenuity of the lawyers for respondents in pleading new causes of action at various stages of this litigation or in switching theories in midstream, and the tenacity of lawyers in prolonging a case long after this Court had ended it might be explained by a hope of recovering an award of attorney fees if they eventually prevail on some theory or another.

In this case, lawyers for the respondents did not plead or prove that any particular defendant engaged in violent activity. They did not attempt such particularized proof because they have no evidence that this occurred. Instead, they turned to the federal racketeering law, obfuscating a fact demonstrated above: RICO was never intended by Congress to apply to civil protesters at all. In short, they are close to the description of "fog everywhere" that Dickens used to describe the activity of lawyers in Chancery in nineteenth-century London. *See* Charles Dickens, *Bleak House* 1 (1994; orig. ed. 1852-1853).

Most of the *amici* who join this brief also joined the briefs filed in the October 2001 Term. Few of the amici are lawyers, but even the non-lawyers wondered how a lower court could, in effect, reverse this Court. *See, e.g., In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895). When asked to consider joining another brief this Term on the same matter in the same case, most of the amici spontaneously observed that *endless litigation eats up the meager resources of people who espouse unpopular views*. We now say respectfully to the Court, "Enough is enough." Grant the petitions in Nos. 04-

done not only in this case, but also in other cases directly affecting some of the amici. The Court should issue the writ now to reinstate a sensible construction of RICO and the Hobbs Act.

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1244 and 04-1352 and summarily reverse the court of appeals. *See, e.g., Baltimore & Ohio R.R.* v. *United States*, 279 U.S. 781, 785 (1929).

II. THE SEVENTH CIRCUIT'S INTERPRETATION OF THE HOBBS ACT CONFLICTS WITH THAT OF OTHER CIRCUITS, IGNORES THE LONG HISTORY OF SOCIAL PROTEST IN THIS COUNTRY, NEEDLESSLY JEOPARDIZES THE RIGHTS OF THE PEOPLE TO ENGAGE IN VIGOROUS PROTEST TO A WIDE VARIETY OF GOVERNMENTAL POLICIES AT A MOMENT WHEN WE ARE TRYING TO EXPORT DEMOCRACY ABROAD, AND UNDERMINES THE RIGHTS OF WORKING PEOPLE TO ENGAGE IN CONCERTED ECONOMIC ACTIVITY PROTECTED UNDER THE FEDERAL LABOR LAWS AT A TIME OF INCREASED VULNERABILITY OF ORGANIZED LABOR.

A. The court of appeals needlessly generated a circuit conflict by decoupling robbery and extortion from the Hobbs Act.

The text of the Hobbs Act adopted in 1946 clearly links the federal violation with the common law crimes of robbery and extortion. Section 2 provides: "Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or commodity in commerce, *by robbery or extortion*, shall be guilty of a felony." Section 5 provides: "Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose *to do anything in violation of section 2* shall be guilty of a felony." Pub. L. No. 486, 60 Stat. 420 (1946) (emphasis added).

This case has never involved any allegation of robbery, for none of the anti-abortion protestors ever *stole* any property

from any of the clinics at which they engaged in sit-ins. And the law of the case determined by this Court in *Scheidler II* is that this case no longer involves any contention about extortion, for none of the anti-abortion protestors ever *obtained by force or violence* any property from any of the clinics at which they staged protests. Since the two crimes expressly mentioned in the Hobbs Act have no relevance to this case, the Court's concluding paragraph was ineluctable: "Because *all of the predicate acts supporting the jury's finding of a RICO violation must be reversed*, the judgment that petitioners violated RICO must also be reversed." *Scheidler II*, 537 U.S., at 411 (emphasis added), No. 04-1352, Pet App. 48a.

Nevertheless, on remand the court of appeals held the case for a full year—a long time to ponder a clear mandate—and then took another year to rule on the petition for rehearing. What emerged from all this judicial deliberation was not the birth of a new legal vision of the relationship of federal and state crimes, nor even a bold statement of how the Hobbs Act must be sensibly construed, but only a meek iffy supposition that "it is *not beyond the realm of possibility* that the revisers *may have made* certain substantive changes, either advertently or inadvertently." No. 04-1244, Pet. App.,15a.[2]

After all this waiting, the court of appeals directed the district court to consider a novel view of the Hobbs Act that had been rejected by all other circuits that have considered it. *See* No. 04-1244, Pet. 18-22. Judge Wood[3] wrote: "it would

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[2] In the *Ars Poetica*, the ancient Roman poet Horace wrote: "Parturient montes, et nascitur ridiculus mus." ("The mountains are in labor, and a ridiculous mouse is born.")

[3] The perception of dispassionate fairness in the disposition of this case by Judge Wood is blurred when one discovers that the same Circuit Judge who authored (1) the opinion that this Court reversed 8-1 in 2003, (2) the unpublished order a year later in 2004 resuscitating the case, and (3) the published opinion this year denying the petition for rehearing has been throughout her judicial career a member of the Respondent National

be imprudent to resolve this problem of statutory interpretation at this stage" and she elected instead to follow "for reasons of judicial economy and restraint . . . a wait-and-see approach." No. 04-1244, Pet. App., 6a-7a, 15a-16a. "Imprudent"? It is not imprudent; it is impertinent for a lower court to ignore the mandate of this Court. "Judicial economy"? The court of appeals wasted judicial resources by prolonging a case that this Court ended over two years ago. "Restraint"? The court of appeals was unrestrained in page after page attacking the sensible view of the Hobbs Act offered by the petitioners in their briefs below. "Wait-and-see"? This is not a case about the rule against perpetuities; it is a case that misapplies RICO to social protesters.

B. The court of appeals needlessly jeopardized the rights of the people to engage in vigorous protest against a wide variety of governmental policies.

Amici include famous civil rights activists who bore the brunt of the violence of arch-segregationists like Bull Connor and George Corey Wallace, but they overcame that violence by nonviolence. The civil rights of African Americans were the focus of major protests against a brutal pattern of systematic discrimination in housing, employment, schooling, and the franchise. In response to this organized violence

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Organization of Women, or from the year 2000 to the present a member of the Chicago chapter of NOW. *See Sullivan's Judicial Profiles: The Illinois Judicial Directory* 840 (1996); *id.*, 639 (1997-1998); *id.* 727 (1998-1999); *id.* 726 (1999-2000); *id.* 744-745 (2000-2001); *id.* 745 (2001-2002); *id.* 771 (2002-2003) *id.* 775 (2003-2004); and *id.* 780 (2004-2005). Amici have not checked this information for accuracy, but such information in reference publications of this sort is generally provided to the publisher by the subject of the profile.

practiced both by the government and by private parties, Dr. Martin Luther King, Jr., the principal leader of the movement to end legalized apartheid in this country, preached and lived a commitment of nonviolence. This commitment to nonviolence, however, did not guarantee there never were any instances in which civil rights protestors threatened violence to the property of a merchant engaged in discriminatory hiring practices. On the contrary, that very fact pattern was the subject of a ruling by this Court in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). As Justice Stevens wrote in *Claiborne Hardware,* "Speech does not lose its protected character simply because it may embarrass others or coerce them into action." *Id.* at 910; *see also Cox v. Louisiana*, 379 U.S. 536, 551-552 (1965) (since one of the functions of free speech is "to invite dispute," it may "best serve its high purpose when it induces a condition of unrest ... or even stirs people to anger").

The district court considered petitioners' arguments about *Claiborne Hardware*, but preferred instead to follow *Milk Wagon Drivers of Chicago v. Meadow Dairies*, 312 U.S. 287 (1941) (upholding an injunction prohibiting both violent and nonviolent picketing activity because of the violent environment and conduct surrounding the activity). No. 04-1244, 127a-128a. The court of appeals considered *Claiborne Hardware* in passing, see No. 04-1444, Pet. App. 48a-49, but the logic of the court of appeals is as completely at odds with *Claiborne Hardware* as it is in defiance of the mandate of this Court in *Scheidler II*. *Claiborne Hardware* set clear limits on the imposition of vicarious or enterprise liability upon an entire group for the conduct of some members who might have known of and authorized illegal tactics by that organization, while most of the membership remained truly innocent of any illegal acts committed by the organization. *Claiborne Hardware* should not be reversed under the table by lower courts.

If RICO had been on the books back in the 1960s and if the lower court's reading of RICO is right, then Dr. King and the SCLC would have been vulnerable to losing all of their assets to their arch-segregationist racial-supremacist adversaries. All it would have taken to reach that bizarre result is for a federal judge to have viewed the "trespass" by sit-in protesters at racially segregated lunch counters as a "threat of violence" to the property of the Woolworth company! Similarly, Rosa Parks' famous refusal to sit in the back of the bus, which triggered a year-long, city-wide boycott of the Montgomery buses, would certainly qualify as a "threat to property affecting interstate commerce." *See, e.g.*, Martin Luther King, Jr., *Stride Toward Freedom* (1958); for brief sketches of similar events in the civil rights movement, *see, e.g.*, Taylor Branch, *Parting the Waters* (1988); Howard Zinn, *A People's History of the United States: 1492—Present* 440-450 (1995); Frances Fox Piven and Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail* 181-263 (1979, with bibliography); Juan Williams, *Eyes on the Prize: America's Civil Rights Years, 1954-1965* (1987); and Eric Foner, *The Story of American Freedom* 275-87 (1998).

As a practical matter, moreover, the lower court's reading of the Hobbs Act is impossible for a leader of a protest movement to enforce. It is bound to happen sooner or later that a member of a loosely defined movement may do things that are not authorized by the leadership, especially in the heat of the moment, when tempers and emotions run high. The net effect of the Seventh Circuit's novel reading of the Hobbs Act is that any deed of protest that bothers an entrenched political establishment or a powerful commercial interest can become subject to the draconian remedy of treble damages authorized under the federal racketeering law and, under the view of RICO adopted by the court of appeals, even to nation-wide injunctions to stop protesters' "offensive" activity all over the country, *see* Part III below, all because of the acts of a few uncontrolled parties who turn up at a rally.

This surely is not the message that this country should be sending to the world at a moment when we are concerned with the growth of democratic values elsewhere in the world.

In times of crisis, the People rather than governmental officials (arresting officers, angry mayors or governors or legislators, even judges who yield to the passion of the day), have often been the moral compass of society. Law has not only been an instrument of establishing justice, but has also become a means of coerced injustice. In such moments the People have frequently protested the moral flaws of the law, whether enacted by the people's representatives or pronounced by the judiciary. For this principle of democracy to thrive at a time we are trying to urge greater openness to democracy in other cultures, vigorous social protest cannot flourish with a case that imposes on protesters severe penalties under the federal racketeering laws.

C. The court of appeals needlessly undermines the rights of working people to engage in concerted economic activity protected under the federal labor laws.

As the wide spectrum of opinion reflected in the makeup of the *amici* suggests, the interpretation of the Hobbs Act offered by the court of appeals can have a devastating effect on social protest movements of all stripes. It can be particularly injurious to the rights of organized labor to bargain collectively over terms and conditions of employment and to engage in concerted protected activity, such as picketing an employer over alleged unfair labor practices.

Labor history is replete with episodes of brutal violence against workers attempting to organize and to withhold their services if negotiations failed. Examples include the railroad strike of 1877, the Haymarket Square affair of 1886, the Pullman Strike of 1895, the Minneapolis strike of 1934, and the strike by the International Longshoremen's Association

in San Francisco in 1934 that led to a general strike joined by twenty other unions. As tension between labor and management mounted during the Depression era, Congress responded by enacting the Wagner Act, 49 Stat. 449 (1935), sustained against a commerce clause challenge in *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937). The NLRA, 29 U.S.C. §§ 151 et seq., protects the rights of workers to organize for purposes of collective bargaining over terms and conditions of their employment, and the right of workers to engage in "protected concerted activity," including picketing and boycotting.

Adversaries of the labor movement have long advocated the use of the Hobbs Act as a weapon against unionism. That is precisely what this Court rejected in *United States* v. *Enmons*, 410 U.S. 396 (1973). After *Enmons* the foes of organized labor then tried to persuade Congress to amend the Hobbs Act in this fashion, but failed in these legislative efforts. Now these foes of organized labor have been handed an astonishing victory by the court of appeals, whether it did so "advertently or inadvertently." *See* No. 04-1244, Pet. App. 15a (commenting on the 1948 revisions of the Hobbs Act, which, according to the court of appeals were either "formal, stylistic changes" or "substantive changes, whether advertently or inadvertently").

Decoupled from the two crimes specified in the Hobbs Act, robbery and extortion, this federal statute could become a nightmare for organized labor. Under the loose construction of the act suggested by the court of appeals, tensions between workers and management that erupt into a vaguely defined "threat to property affecting interstate commerce" is now the predicate for a RICO suit in the three states of the Seventh Circuit. The rights of workers secured under the NLRA have not been nullified by the court of appeals in some overt, direct assault upon the New Deal. Instead, the court of appeals has eroded the meaning of the Hobbs Act and in so doing has invited foes of organized labor to use the federal racketeering

statute as an end run around the agency charged with protecting concerted union activity, the NLRB.

The opinion of the court of appeals can be read as an open invitation to foes of organized labor to file RICO suits against labor unions whenever two or more workers threatens the property rights of someone engaged in interstate commerce, through trespass or otherwise. Thus, if RICO had been on the books back in the 1930s and if the lower court's reading of RICO is right, the UAW and the Reuther brothers would have been vulnerable to losing all of their assets. All it would have taken to reach that bizarre result is for a federal judge to have viewed the "trespass" by auto workers on the Ford Motor Company's property as a "threat of violence to property" to Ford during the famous UAW sit-down strike at the Ford plant in 1937, even though no one would say that the UAW workers were robbing Henry Ford or engaging in extortion!

The construction of the Hobbs Act proposed by the court of appeals, is moreover, irreconcilable with *United States* v. *Enmons*, 410 U.S. 396 (1973). *Enmons* involved serious allegations of violence against a company by union members, who allegedly fired high-power rifles at the employer's facility and blew up a company transformer, in order to achieve higher wages. Nonetheless, this Court affirmed the dismissal of the one-count Hobbs Act indictment in the case. As Justice Stewart noted, "In the nearly three decades that have passed since the enactment of the Hobbs Act, no reported case has upheld the theory that the Act proscribes the use of force to achieve legitimate collective-bargaining demands." *Id.* at 408.

Justice Stewart addressed the issue of excessive punishment as follows: "The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer's truck would be subject to a Hobbs Act prosecution and the possibility of 20 years' imprisonment and a $10,000 fine." *Id.* at 410.

Just as the decision of the court of appeals is irreconcilable with *Enmons*, so too it should be noted that *Enmons* is entirely in harmony with *Scheidler II*, which rested upon the very distinction between extortion and coercion that the Court had addressed in *Enmons*: "The Government's broad concept of *extortion*—the 'wrongful' use of force to obtain even the legitimate union demands of higher wages—is not easily restricted. It would cover all *overtly coercive conduct* in the course of an economic strike, obstructing, delaying, or affecting commerce." *Id.* at 410 (emphasis added).

As with civil rights leaders, *see* Part II B above, so also labor leaders know that as a practical matter, the criterion the lower court invented is impossible to maintain. Union leaders can try mightily to impress upon the rank and file the need to picket in a peaceful manner, but tempers can fly in these situations, especially if there is a prolonged strike. As this Court concluded in *Enmons*, "it would require statutory language much more explicit than that before us here to lead to the conclusion that Congress intended to put the Federal Government in the business of policing the orderly conduct of strikes. Neither the language of the Hobbs Act nor its legislative history can justify the conclusion that Congress intended to work such an extraordinary change in federal labor law or such an unprecedented incursion into the criminal jurisdiction of the States." *Id.* at 411.

The logic of the lower court is completely at odds with this Court's holding in *Enmons* and in *Scheidler II*, neither of which stand for the astonishing proposition that the Hobbs Act may be prosecuted or be understood without reference to the two crimes specified in the Act, robbery and extortion. For this reason alone, the Court should issue the writ to resolve the conflict between the judgment below and the mandate of this Court in this very case and with its ruling in *Enmons*. Congress considered and rejected the opportunity to amend the Hobbs Act to allow it to apply to labor activity.

We, the People, did not ordain unelected judges to do to a statute what our representatives in the political branches expressly refused to do.

III. THE COURT OF APPEALS IMPROPERLY PERPETUATED A NATIONWIDE INJUNCTION AGAINST UNPOPULAR CIVIL PROTESTORS FOR A FULL TWO YEARS AFTER THIS COURT HAD ORDERED THE INJUNCTION VACATED.

At the conclusion of the trial in this case in 1999, the district court entered a nationwide permanent injunction regulating petitioners' future protest activities at abortion clinics. No 04-1244, Pet. App., 141a-174a. The court of appeals affirmed "in all respects." *Id.* at 61a (last word of 2001 order).

This Court reversed, concluding its opinion on February 26, 2003 with three clear commands: (1) "all of the predicate acts supporting the jury's finding of a RICO violation must be reversed," (2) "the judgment that petitioners violated RICO must also be reversed," and (3) "[w]ithout an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated." *Id.* at 411. Those three commands are, of course inter-related. Without *any* predicate acts, the RICO judgment had to fall. And without a final judgment favoring the respondents, the injunction had to be vacated. *See e.g., Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 546, n. 12 (1987).

For these reasons amici imagined that the case was over, but we underestimated the capacity of lawyers and judges to extend the life of a case. After pondering the case for a full year, the court of appeals issued an unpublished order remanding the case to the district court to determine whether four unspecified "acts or threats of physical violence to any

person or property" are sufficient to support the nationwide injunction it imposed. No. 04-1244, Pet. App. 25a-29a.

Amici supposed further that it was because the case was definitively resolved in favor of the petitioners that this Court determined that it need not address the moot question "whether a private plaintiff in a civil RICO action is entitled to injunctive relief under 18 U.S.C. § 1964." In our brief on the merits in *Scheidler II* we addressed that question. We touch on this issue now briefly, offering the Court a perspective on injunctions that comes from the considerable cumulative experience of the amici as social activists engaged in civil protest on a wide variety of contentious and difficult issues, including animal rights, civil rights, death penalty, disability issues, international human rights, environmental protection, and war and peace.

First, *amici* note the duration of the injunction. More than two years after this Court ordered the injunction to be vacated, the injunction in this case is still ongoing. This injunction was ordered against protest activity that happened nearly twenty years ago. It has been in force for nearly six years, and if the lower court is right, it could go on for years to come. See No. 04-1244, Pet. App. 141a-142a (on July 28, 1999, district court entered injunction, to run for 12 years). The duration of this injunction deeply troubles the *amici*. This is not a desegregation case from the 1950s and 1960s requiring federal courts to retain jurisdiction over injunctions precisely because of recalcitrant school boards openly defying court orders. This is a case about social activists using tactics similar to those used by SNCC and other civil rights activists in the 1960s—sitting-in and sitting-down—to stop activity they deem immoral. Not all of the *amici* agree with petitioners on the substantive issue of abortion, but all of us have a hard time understanding why a lower court would so brazenly disregard the words of this Court that seem to us plain: "Without an underlying RICO violation, the injunction issued by the District Court must necessarily be vacated."

This Court did not add a specific chronological dimension to its order, such as "with all deliberate speed" or "instanter" or "now." It had no cause to do so in 2003, for when this Court issues an order to vacate an injunction, the normal assumption would be that it would be done promptly. When the Court used the phrase "with all deliberate speed," *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955), it intuited that the subject of its order—racial desegregation of public schools—would take time to achieve, and it intentionally left to the district courts the task of devising desegregation plans in their region of the country. But the order in this case was not to begin to devise plans for "the dismantling of well-entrenched dual [school] systems tempered by an awareness that complex and multifaceted problems would arise which would require time and flexibility for a successful resolution." *Green v. School Bd. of New Kent County*, 391 U.S.430, 439 (1968). The order in this case was simply to dissolve an injunction that no longer had any legal basis. To vacate the injunction in this case does not take much time. It only takes the humility to follow a direct order from this Court. After a decade of foot-dragging by local officials in Virginia, this Court amended the ambiguous term "with all deliberate speed" to the direct and simple term "now." *Green, id.* It is now the moment for the Court to use the same adverb in this case. The injunction should be vacated *now*.

When First Amendment right are implicated, this Court has given explicit directions for the speed with which it expects its mandates to be complied with. For example, when the government obtained an injunction from one court of appeals against the publication of the Pentagon Papers, this Court granted expedited review, reversed the circuit that had granted the injunction, vacated the stays that the Court had ordered, and directed: "The judgments shall issue *forthwith*." *New York Times Co. v. United States*, 403 U.S. 713,714 (1971) (emphasis added). Justice Black took the view that "every moment's continuance of the injunctions

against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment." *Id.* at 715 (Black, J., concurring). In *Carroll v. Princess Anne*, 393 U.S. 175 (1968), a white supremacist organization conducted a public rally at which "aggressively and militantly racist" speakers attacked "primarily Negroes and, secondarily, Jews" with "deliberately derogatory, insulting, and threatening language." *Id.* at 176. The state appellate tribunal had already dissolved the permanent injunction, which was to last for *ten months* on the ground that "the period of time was unreasonable and that it was arbitrary to assume that a clear and present danger of civil disturbance and riot would persist for ten months." *Id.* at 177-78. This Court took the case to reverse the *ex parte* temporary restraining order of *ten days*' duration.

Second, even if this Court had not ruled with clarity about the nationwide injunction in this case, protest activity in front of abortion clinics is now governed by the Federal Access to Clinic Entrance Act, 18 U.S.C. § 248. This statute was enacted because Attorney General Reno and the Attorneys General of several states took the view that no federal law—including the Hobbs Act and RICO—afforded any protection to abortion clinics under the circumstances of protests in front of clinics at the time.

Third, many of the amici are labor unions with collective memory of the nefarious use of injunctions to prohibit workers from strikes and boycotts and other economic activity to protest that inadequacy of compensation that does not amount to a "living wage," defined in religious social thought as the amount of money "necessary to raise a family in decent and frugal comfort." *See, e.g,* Leo XIII, *Rerum Novarum* (1891).

A distinguished member of this Court contributed the definitive study of the misuse of federal and state judicial authority in ordering workers and unions to refrain from

concerted activity now protected under the NLRA. *See* Felix Frankfurter and Nathan Greene, *The Labor Injunction* (1930). Congress responded with the Norris-La Guardia Act, 47 Stat. 70, 29 U.S.C. §§ 101-115 (prohibiting labor injunctions). *But see* Richard A. Resbin, Jr., *A Strike Like No Other Strike: Law & Resistance during the Pittson Coal Strike of 1989-1990* 27-28, 39, 57-58, 62-64, 109-110, 148-50, 155-56, 163-67, 197-99 (2002) (detailing injunctions against strikers). If uncorrected by this Court, the opinion of the court of appeals will invite foes of organized labor to avoid the already weakened restraint against labor injunctions by the simple device of using civil RICO against unions.

Finally, amici have considerable experience with public demonstrations of popular dissent from controversial policies. They are often ordered by judges not to do this or that. For example, a large group of Americans, including several of the amici, regularly protest against the exportation of torture and the assassination of political opponents of brutal regimes. They do so in front of Fort Benning, Georgia, which houses a program for foreign military and security officials that has included training in the use of torture. The alumni of the School of the Americas have been engaged in death squads. They include the assassins of Archbishop Oscar Romero and of six Jesuit priests and their housekeepers in El Salvador. Each year the "security" arrangements at Ft. Benning get tighter, and each year a federal judge places further restrictions upon activity that amici deem essential to a vital democracy. When elderly nuns cross the line the judge draws in his imaginary sand, he then imposes the maximum sentence allowable, ordering the nuns off to long terms of incarceration for daring to stand against a policy they deem at odds with fundamental decency and with this country's commitment to international humanitarian law specified in treaties and covenants to which this nation is a high contracting party.

The decision by the court of appeals to ignore the mandate of this Court dissolving the injunction in this case has the effect of emboldening judges all over the country who are so minded to issue injunctive relief where they should be thinking instead of preserving the fragile ability of the People to bring their government back to decency and sanity.

CONCLUSION

The Court should either issue the writ in Nos. 04-1244 and 04-1352 and summarily reverse on the issues in which the court of appeals has strayed far from the Court's mandate, or it should issue an extraordinary writ of mandamus commensurate with the extraordinary mishandling of this case by of the court of appeals. If the Court grants the writ and places the case on its docket for plenary review, amici will brief the Court on numerous examples from the history of the struggle for the effective protection of the civil rights of the emancipated slaves, of women, and of working people, that illustrate that the view of the court of appeals is not only inconsistent with the legislative history of the Hobbs Act and of RICO, but also with the broader social and political history of the American people.

Respectfully submitted,

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APPENDIX

APPENDIX A

Statements of Interest of *Amici Curiae* Communities and Voluntary Associations

As noted in the text of the brief, *amici* are voluntary associations and individuals who engage in protest on a wide variety of issues. Because Consistent Life organized the participation of these *amici* in this brief, it is listed first.

Consistent Life [CL] is a coalition of groups and individuals committed to nonviolence and respect for life. The network promotes the consistent life ethic, focusing on the connections among issues concerning human life, including war, abortion, poverty, racism, the arms race, the death penalty and euthanasia. CL supports all means of nonviolent change including, but not limited to, nonviolent direct action, political and legislative action, and direct service to those suffering under these attacks on life. Lana Jacobs (current executive director of CL), Carol Crossed (former executive director of CL), Mary S. Rider (former executive director), and Ruth Enero (former president of the Board of Directors) have frequently engaged in nonviolent civil disobedience relating to the issues listed above. All five are married women and mothers of many children. If their political opponents were to use civil RICO against them, the loss of their homes, cars, and other valuable things they own would wreak havoc upon them and their families. Ms. Rider offered a declaration before the district court in this case at the stage when it was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network [PLAN]. This declaration challenged the enormous breadth of the nationwide injunction.

Agape is a community of faith in Franklin, Louisiana, that witnesses for peace and justice through nonviolence. It engages in education of its members and the public, especially on the death penalty, through publishing booklets,

brochures, and treatises on how to effect change through raising public awareness and consciousness about issues of justice and peace.

Carolina Interfaith Task Force on Central America (CITCA) is a voluntary association of persons who believe in nonviolent direct action on issues relating to peace and justice in Central America. CITCA notes that all citizens of the United States have the right to express their views on controversial matters in a nonviolent fashion. This right is jeopardized when federal courts penalize citizens for exercising rights that are fundamental parts of the Bill of Rights.

The Catholic-Labor Network is a place for Catholics who are active in their churches and unions to learn about their Church's teachings regarding labor issues, to pray for those who are working for economic justice, and to share information about events and struggles taking place in their area.

The Catholic Peace Fellowship (CPF) is a nationwide organization of Catholics committed to peacemaking in the name of Christ. CPF engages in educational projects about peace and nonviolence, and it supports those who stand for peace by virtue of conscience. For example, some of the members of CPF have engaged in nonviolent civil disobedience of laws and policies inimical to peace in today's world.

The Catholic Worker (CW) is a lay Catholic community founded by Dorothy Day and Peter Maurin to bear witness to the Gospel that identifies service to the hungry, the thirsty, the homeless, and the imprisoned as a way of recognizing the presence of God in categories of human need. The community provides hospitality to homeless families while working to address the root causes of homelessness. Committed to following the teachings of Christ on nonviolence, each CW house or center engages in acts of hospitality and witness to Gospel values in a variety of ways, including demonstrations against war and militarism, poverty, and abortion. The CW

houses that join this brief are: the Casa Juan Diego (Houston, Texas); Dorothy Day Catholic Worker House (Washington, D.C.); the Day House (Detroit, Michigan); Ithaca, New York Catholic Worker; the Los Angeles Catholic Worker; Mary's House (Birmingham, Alabama); Redwood City (California) Catholic Worker; St. Francis Catholic Worker Community (Columbia, Missouri); and the St. Francis and Therese Catholic Worker House (Worcester, Massachusetts).

Center for Action and Contemplation is a Christian center forwarding the integration of social action and contemplative prayer. The members of this community regularly engage in transforming society around the issues of poverty, war, and other kinds of violence.

Citizens United for Alternatives to the Death Penalty (CUADP) is a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism. CUADP takes no position on the abortion issue. It does not endorse or support the stand of these defendants on that issue, nor does it necessarily approve of their tactics or actions. It supports the petitioners strictly as a legal matter, urging the Justices that peaceable, nonviolent direct action—that is, peaceful civil resistance which "crosses the line" and may involve sit-ins or blocking access in a manner that might be regarded as a "threat" to property rights should not be held to constitute the federal felony punished by the Hobbs Act, without any proof of robbery or extortion. Nor should a ""pattern" of such "direct action" "be penalized under the federal racketeering laws.

The Conference of Major Superiors of Men serves the leadership of Catholic orders of over 25,000 vowed religious priests and brothers in the United States. The Justice and Peace Division provides a voice for these communities throughout society in witnessing against capital punishment, war, poverty, and any issue that threatens life. The civil rights

of free speech and assembly are crucial to effective action against oppression. These civil rights are threatened by the use of the federal racketeering statute against political and religious dissenters.

Democrats for Life of America, with chapters in 19 states, is a political organization that supports Democratic politicians and candidates for public office who are committed to legislative initiatives that will empower women and their children, persons on death row, and the elderly and infirm.

The Eighth Day Center for Justice is a community composed of Catholic sisters, priests, and laity who believe that nonviolent direct action is the backbone of our democracy and the core of the Christian message. For example, some of the healing actions of Jesus on the Sabbath were viewed as a violation of the Torah. Religiously motivated opposition to unjust laws has a long and admirable history, culminating in the Civil Rights Movement and the Movement for Gender Equality in this country, and in the opposition to the assault upon human life in the Nazi regime.

Embrace a Consistent Ethic participates in ongoing peaceful public witness against all forms of taking human life, including opposition to war, capital punishment, euthanasia, abortion, racism and poverty. The members of this community believe that the *NOW vs. Scheidler* litigation interferes with the ability to carry out group/individual conscientious objection, even those actions which would normally be considered within the limits of free speech.

Every Church a Peace Church [ECPC] is an association of churches that adopt nonviolent struggle as their way to pursue justice. For this reason ECPC agrees with the brief filed in this case by the Southern Christian Leadership Conference in the court of appeals that the power to impose treble damage awards upon the petitioners and to enter a nationwide injunction under RICO represents "clear and present danger to

future prospects for the lawful exercise of our liberties, namely, the free exercise of religion, speech, press, or assembly and petition for redress of grievances."

The Faith Community of St. Sabina's in Chicago is a Word-based, Bible teaching church that believes in the power of praise and worship—a spiritual hospital where all are welcome and invited to "taste and see the goodness of the Lord." The members of the Faith Community of St. Sabina's believe that the church is called to be the immune system of the world—fighting off the attacks of Satan, by both prayer and peaceable nonviolent direct action. Thus St. Sabina's has crusaded against a host of social evils.

Feminists for Life of New York is a pro-woman, pro-life organization that advocates for change for women and their children. Some of its members engage in civil disobedience. In the twelve years since its inception, members have worn costumes of the early suffragists, stationing themselves outside of convention centers and libraries, to call attention to issues such as domestic violence, child abuse, and child welfare rights. Like Susan B. Anthony, they have worn gags on their mouths to protest the silencing of women's voices. They participate in a vigil at the Hall of Justice on every second Friday of the month to protest the death penalty.

Franciscan Office of Justice, Peace, and the Integrity of Creation, Santa Barbara Province, practices outreach, advocacy, and education with and on behalf of the friars and those with whom they minister.

Interfaith Worker Justice (IWJ), a national nonprofit organization founded in 1996, educates, organizes and mobilizes the U. S. religious community on issues and campaigns to improve wages, benefits and working conditions for workers, especially low-wage workers. For these reasons, IWJ is concerned about the possible misuse of the fed-

eral racketeering statute (RICO) against workers in a labor organizing context.

The International Brotherhood of Electrical Workers (IBEW) represents approximately 750,000 members who work in a wide variety of fields, including utilities, construction, telecommunications, broadcasting, manufacturing, railroads and government. The IBEW has members in both the United States and Canada and stands out among the American unions in the AFL-CIO because it is among the largest and has members in so many skilled occupations

The International Brotherhood of Teamsters (IBT), with 1.4 million members, is one of the largest labor unions in the world. It is also the most diverse union in the U.S., with affiliated Local Unions in every state. IBT represents members in almost every craft and industry, including transportation (trucking, rail and air), manufacturing, warehousing, distribution, and many public employees. The Union is politically active, represents its members vigorously, and often exercises its rights and the rights of its members to engage in picketing, other economic action, rallies, demonstrations and marches in support of the interests of its members and working men and women generally.

Nevada Desert Experience has since 1983 organized nonviolent civil disobedience at the U.S. nuclear test site in Mercury, Nevada, where tens of thousands of people—including the actor Martin Sheen—have been arrested for trespass in their public protest against weapons of mass destruction.

The Orthodox Peace Fellowship in North America is a community of Eastern Orthodox Christians committed to witnessing for peace in our world: Eastern Orthodox Christianity has for 2000 years affirmed the Sacredness of human life from conception to death. This, we understand, is the

faith of Christ, the apostles, the councils, and the fathers and mothers of the Church. This we must proclaim.

Pax Christi USA is the national Catholic peace movement of 14,000 members who are committed to the gospel imperative of seeking peace through nonviolence. The members of this association promote peace through personal and social transformation. They frequently engage in nonviolent protest of policies that undermine peace and justice.

People for the Ethical Treatment of Animals (PETA), with more than 800,000 members, is the largest animal rights organization in the world. Founded in 1980, PETA is dedicated to establishing and protecting the rights of all animals. PETA operates under the simple principle that animals are not ours to eat, wear, experiment on, or use for entertainment. PETA focuses its attention on the four areas in which the largest numbers of animals suffer the most intensely for the longest periods of time: on factory farms, in laboratories, in the clothing trade, and in the entertainment industry. We also work on a variety of other issues, including the cruel killing of beavers, birds and other "pests," and the abuse of backyard dogs. PETA works through public education, cruelty investigations, research, animal rescue, legislation, special events, celebrity involvement, and protest campaigns.

The Peter Maurin Center in Washington, D.C., was established in 1997. In the words of Peter Maurin, the center seeks to contribute to creating a "society where it is easier to be good." The Center does so in three ways: (1) evangelization in the Catholic Worker tradition through operating the Catholic Worker Bookstore; (2) carrying out the works of mercy through operating a furniture and household goods exchange, whereby people who have more than they need give it to the Center, which distributes it to needy people; and (3) organizing for peace and justice through solidarity with the people of Puerto Rico in their effort to de-colonize, and

specifically to rid themselves of the Navy at Vieques; and (4) through work for the abolition of the death penalty, specifically focusing on the case of Mumia Abu-Jamal. The Center is concerned with the broad and elastic application of the RICO act to dissent and nonviolent protest. The misapplication of the law in this way permits the government to single out and criminalize movements for social change virtually at will. Affording the government power of this nature renders democratic practices timid and superficial and essentially disempowers the People in the political process. To protect popular, and especially unpopular, political expression, these effects of the RICO law need to be nullified.

Plowshares is a coalition of religious believers who seek to enflesh the words of the prophet Isaiah 2:4, "They shall beat their swords into plowshares, and their spears into pruning hooks. Nation shall not take up sword against nation and neither shall they study war anymore." The founders of this movement, Fr. Daniel Berrigan, S.J., his deceased brother Philip Berrigan, and Elizabeth McAlister, were leaders in the opposition to the Vietnam War. From burning draft files to organizing larger civil disobedience actions, they provided the peace movement with a sharp focus. Their actions against militarism and the nuclear arms race continue today. Fr. Berrigan offered a declaration before the district court in this case at the stage when the court was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network [PLAN]. This declaration addresses the severe impact on nonviolent social protest that flows from treating loose associations of antiwar protesters as though they were racketeer-influenced corrupt organizations. Fr. Berrigan and Ms. McAlister join this brief in their individual capacities, as do the following Plowshares Activists: John Dear, S.J., Peter DeMott, Clare Grady, Ellen Grady, Art Laffin, Paul Magno, Patrick O'Neill, and Kathy Boylan Shields. All of these activists have spent many years imprisoned for their nonviolent protest against war.

Sojourners is a Christian ministry whose mission is to proclaim and practice the biblical call to integrate spiritual renewal and social justice. In response to this call, the members of this community offer a vision for faith in public life by: publishing Sojourners magazine, and other resources that address issues of faith, politics, and culture from a biblical perspective; preaching, teaching, organizing, and public witness; nurturing community by people from the various traditions and streams of the church; hosting an annual program of voluntary service for education, ministry, and discipleship. Members of Sojourners seek to be guided in their lives and work by the biblical principles of justice, mercy, and humility.

Vieques Support Committee is an organization that has helped to organize civil disobedience to protest the repeated bombing of Vieques Island in Puerto Rico by the United States Navy.

Witnesses for Reconciliation [WFR] was formerly the Committee of Southern Churchmen that was founded in the 1960's to promote the work and vision of Dr. Martin Luther King, Jr., and to advance his cause of nonviolence. The Committee promoted, participated in, and led marches, sit-ins, boycotts, and the freedom rides. WFR continues to advance the cause of civil and political rights for minorities.

Individuals

David Atwood is the director of the Texas Coalition to Abolish the Death Penalty. This group regularly organizes demonstrations against the death penalty in Texas.

Donald Bauer is a Catholic priest who served as a member of the New York State Labor and Religion Coalition since its inception, and who worked tirelessly for farmworker wage equity and other issues on behalf of the poor. He also was appointed to the Congress on Racial Equality and in both of

these capacities used public witness to educate and challenge the public.

Michael Baxter, C.S.C. is a theology professor at the University of Notre Dame, and the national president of the Catholic Peace Fellowship.

Abe Bonowitz is the director of Citizens United for Alternatives to the Death Penalty [CUADP], a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism. On occasion he has engaged in peaceful acts of civil resistance. While CUADP takes no position on the abortion issue, Bonowitz is pro-choice and, therefore, he is in profound disagreement with the petitioners on that issue and deplores the violent tactics that abortion opponents have been known to employ. He does not know these petitioners and has no personal knowledge of their tactics. He is informed, though, that jurors at the trial of this case found petitioners or unidentified persons "associated with" them responsible for four acts or threats against persons or property. He supports this appeal only because, as a legal matter, political protest involving sit-ins or blocking access should not be condemned as "extortion" or " racketeering."

Roy Bourgeois, M.M., is a Maryknoll priest who, after years as a foreign missionary in Central America, founded the School of the Americas Watch [SOAW], a loose coalition of citizens concerned about the widespread abuse of human rights—including torture and murder of religious leaders and labor leaders throughout Central and South America—by foreign military officers who study at the U.S. Army School of the Americas at Ft. Benning, Georgia. Eric LeCompte is the director of programming of SOAW. Each November—on the anniversary of the assassination of six Jesuit priests and their domestic workers in San Salvador by graduates of the School of the Americas—SOAW organizes a major demon-

stration at Ft. Benning against the negative effects of this program upon peace and justice in our hemisphere.

Bernard Broussard is the founder of the Human Relations Council of Louisiana, a group that played a leading role in community organization on behalf of the civil rights of African Americans in Louisiana in the mid 1960s. From that time to the present, he continues to challenge through marches, demonstrations, holding prayer meetings on behalf of the oppressed in the South. He is a founder of Star-throwers, a human rights organization based in Louisiana.

Will Davis Campbell is a writer, lecturer, and long time supporter of the Civil Rights Movement who helped escort African-American children when they tried to integrate a Little Rock, Arkansas high school back in 1957. A founding member of Dr. King's Southern Christian Leadership Conference, he became the Executive Director of the Committee for Southern Churchmen, which is now known as Witnesses for Reconciliation.

Thomas Cornell is the founder of the Catholic Peace Fellowship and an ordained deacon in the Catholic Church. He is the editor of *The Catholic Worker*, a newspaper of national circulation founded by Dorothy Day, and he lives at the Catholic Worker farm in Marlboro, New York.

John Dear, S.J., has written over 100 articles on peace and nonviolent action Fr. Dear's writings focus on nonviolence and peacemaking. One of his books, *Peacemaking Behind Bars*, is an account of his time spent in jail for a 1993 action at Seymour Johnson Air Force Base in Goldsboro, N.C. He has participated in many other actions of nonviolent civil disobedience for justice and peace.

Stephen Dear is the executive director of People of Faith Against the Death Penalty, a national organization with headquarters in Carrboro, North Carolina.

Richard Deats is the editor of Fellowship Magazine, the publication of the Fellowship of Reconciliation [FOR], the largest, oldest interfaith peace organization in the United States. Since 1915 FOR has carried on programs and educational projects concerned with domestic and international peace and justice, nonviolent alternatives to conflict, and the rights of conscience. FOR promotes nonviolence and has members from many religious and ethnic traditions. It is a part of the International Fellowship of Reconciliation, which has affiliates in over 40 countries. FOR was instrumental, maybe critical, in bringing the Gandhian theory of nonviolent activism into play during the Civil Rights Revolution.

Jim and Shelley Douglass are co-founders of Mary House, Catholic Workers, in Birmingham, Alabama, peace activists, co-founders of Ground Zero Center for Nonviolent Action, and co-organizers of a national campaign to stop the "White Trains" transporting nuclear weapons across the U.S. and to stop the Trident nuclear submarine and missile system. The Douglasses believe that every nonviolent movement in U.S. history could have been squelched by the way in which RICO has been applied in *NOW v. Scheidler*.

Mary Anne Flores, Clare Grady, and Jessica Stewart are members of the Ithaca Peace Community, a group that expresses concern about social justice issues and facilitates the representation of those who would otherwise remain voiceless and unheard in our society. These three women have engaged in nonviolent direct action that has led to their arrest for trespass upon government property. For example, they have served sentences for trespass at the Hancock Airfield in Syracuse, NY, in order to protest the bombing of the people of Iraq.

Thomas Gumbleton is a Catholic bishop in the Archdiocese of Detroit, Michigan, and a founder of Pax Christi, USA. He was a leading voice urging the United States Conference of Catholic Bishops to issue its statement in 1971 collectively

opposing the Vietnam War on the ground that the war could no longer be justified under the principles of the just war tradition. Bishop Gumbleton has worked and visited in poor and war-torn countries in Latin America and the Caribbean and is deeply concerned with human rights violations around the world. He holds a deep belief in the power of nonviolence to effect social change.

Kathy Kelly is a co-founder of Voices in the Wilderness, a group that has sought to end the economic sanctions against the people of Iraq, by sending delegations to Iraq to break the siege and to bring desperately needed medical supplies to children and families, and by sponsoring demonstrations against these sanctions, including week-long fasting outside the headquarters of the United Nations in New York. Voices in the Wilderness has also protested against the current war in Iraq. The American Friends Service Committee nominated Ms. Kelly for the Nobel Peace Prize.

Andy Lipscomb is a member of Witnesses for Reconciliation, a board member of the Seamless Garment Network, and a long-time activist for civil rights.

Deborah McEvoy is a member of Feminists for Life of America and of the Detroit Peace Community. In her role as a health professional, she supports the needs of women and their children through petitions, public advocacy and demonstrations.

Rachel MacNair, a Quaker, is the founder and director of the Feminism and Nonviolence Studies Association. She has written a seminal book on peace psychology, and has been arrested frequently for participation in nonviolent direct actions at nuclear weapons facilities and abortion clinics.

John W. Oliver is the coordinator of the Orthodox Peace Fellowship in North America. He is professor emeritus of history at Malone College.

Gail Phares is a founder of Witness for Peace [WFP] a national organization working to affect U.S. policy in Latin America. Ms. Phares is also the founder and director of the Carolina Interfaith Task Force on Central America. She has led many delegations to war-torn areas in Latin America and frequently joins nonviolent peace and justice actions at home. The members of WFP believe that organizing for justice—including the right to nonviolent protest of official policies of our government—is a fundamental right secured under the Constitution.

Michael Pfleger is Pastor of the Faith Community of St. Sabina's on Chicago's South Side, a "Pastor, Preacher, Parent, Lecturer, Activist, and 'Errand Boy for Jesus,' " who has mobilized his parish and community in a series of protest crusades, sometimes involving peaceable nonviolent direct action, including campaigns against drug paraphernalia (which precipitated statewide legislation), "Standing Up—Talking Back," a social action crusade, an anti-Alcohol & Tobacco Billboard campaign which reduced the number of such billboards from 118 to 40 in the local community, and sting operations to identify vendors selling liquor to minors. On April 27, 1998, citing the verdict in *NOW vs. Scheidler*, the Chicago Sun-Times editorialized that, if RICO weren't curtailed, that statute might even be invoked to deter or punish Fr. Pfleger's and St. Sabina's community-based protest against the trivialization of violence on the Jerry Springer TV show.

Sister Helen Prejean, CSJ, is internationally known for her opposition to the death penalty and her work with both death row inmates and the families of murder victims. She is the founder of Survive, a New Orleans victim's advocacy group, and the author of *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States*, which became both a national and international bestseller and a major motion picture. Sister Helen does not believe that peaceful, non-

violent protesters should be condemned as "extortionists" or protest leaders prosecuted as "racketeers."

Scott and Claire Schaeffer-Duffy are co-founders of the Saints Francis and Therese Catholic Worker in Worcester, MA, a lay Catholic pacifist community which offers hospitality to homeless men and women. They also publish *The Catholic Radical*, a bi-monthly journal of opinion. Scott has engaged in civil disobedience at weapons facilities and abortion clinics, and has lectured extensively at colleges and universities throughout New England on the value of nonviolent direct action. The Schaeffer-Duffys state their interest in this case as follows: "Nonviolent civil disobedience is an American tradition, one that has brought much good to our country. We advocate its use when laws contradict the needs of the common good and the greater law of God's love for all."

Martin Sheen is an actor who has participated for nearly two decades in protests against weapons of mass destruction and in demonstrations pertaining to homelessness and other issues of social justice.

John Stoner is a member of Mennonite Central Committee, a traditional peace church. He is the founder of Every Church a Peace Church, a movement to share the convictions of the Anabaptist community with all other Christian churches.

Brian Terrell is a leader of the Catholic Peace Ministry in Des Moines, Iowa and is a participant with members of the Des Moines Catholic Worker community in nonviolent Gandhian activism at Offutt Airforce Base.

Howard Zinn is a professor of history at Boston University. He has served as a professor of history at Spelman College in Atlanta, and as a visiting professor at the University of Paris and the University of Bologna. He has written over a dozen books which deal in some way with protest movements in American history. Two of these books most closely related to

the theme of this brief are *Disobedience and Democracy* (1968), and *A People's History of the United States* (3d ed. 1999).

Stephen Zunes is a Professor of Political Science at the University of San Francisco. He is the principal editor of Nonviolent Social Movements (Blackwell, 1999). His research interests have included the impact of grassroots political movements on policy and government. Prior to his academic career, he engaged in nonviolent civil disobedience campaigns against nuclear power, nuclear weapons and apartheid and served as a staff member and nonviolence trainer for organizations supporting nonviolent civil disobedience.